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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 EKO BRANDS, LLC,

7 Plaintiff,

8 v.

9 ADRIAN RIVERA MAYNEZ
10 ENTERPRISES, INC.; and
ADRIAN RIVERA,

11 Defendants.

C17-894 TSZ

MINUTE ORDER

12 The following Minute Order is made by direction of the Court, the Honorable
Thomas S. Zilly, United States District Judge:

13 (1) Pursuant to the parties' stipulation, docket no. 85, plaintiff's claim for
14 violation of the Washington Consumer Protection Act ("CPA"), as well as defendants'
15 counterclaim for declaratory judgment that they have not violated the CPA, are each
DISMISSED with prejudice and without costs.

16 (2) The parties' stipulated motion, docket no. 90, to seal the unredacted version
17 of the proposed Pretrial Order, docket no. 92, is GRANTED in part and DENIED in part,
18 as follows. The unredacted version of the proposed Pretrial Order, docket no. 92, shall
remain under seal, but the portions of such document that the parties view as confidential
are admitted facts that will be included in the jury instructions, which will be read in open
court and filed for public view in the docket.

19 (3) Plaintiff's motion in limine, docket no. 82, is STRICKEN in part,
20 GRANTED in part, DENIED in part, and DEFERRED in part, as follows:

21 (A) Plaintiff's motion to exclude certain witnesses is STRICKEN as
moot;

22 (B) Plaintiff's motion to preclude defendants from asserting certain
23 affirmative defenses is STRICKEN in part as moot with regard to

1 the defenses of “fair use” and “unclean hands,” which defendants
2 are no longer pursuing, GRANTED in part with regard to the
3 defenses of “estoppel” and “waiver,” which were not pleaded in
4 defendants’ Answer, docket no. 25, see Fed. R. Civ. P. 8(c)(1),
5 GRANTED in part as to plaintiff’s motion to exclude evidence of
6 “claim splitting” and “double recovery,” which are issues of law to
7 be resolved by the Court, see Aero Prods. Int’l, Inc. v. Intex
8 Recreation Corp., 466 F.3d 1000, 1016-20 (Fed. Cir. 2006), and
9 DEFERRED in part to the Pretrial Conference with regard to the
10 defense of “laches”; at the Pretrial Conference, the Court will
11 address the procedures for resolving all issues relating to claim
12 splitting and double recovery; and

13 (C) Plaintiff’s motion to exclude certain exhibits is DENIED in part as to
14 exhibits, if any, that (i) were not requested in discovery, (ii) did not
15 exist more than thirty (30) days before they were disclosed to
16 plaintiff by defendants, or (iii) are otherwise available to the public;
17 except as denied, plaintiff’s motion to exclude certain exhibits is
18 DEFERRED to the Pretrial Conference.

19 (4) Defendants’ motion in limine, docket no. 80, is GRANTED in part, DENIED
20 in part, and DEFERRED in part, as follows:

21 (A) Defendants’ motion to exclude evidence regarding the parties’ prior
22 or other pending litigation, including Case No. C15-522 JPD in this
23 district, Case No. C16-4676-JAK-SS in the Central District of
California, Case No. 17-2421 in the Federal Circuit, and proceedings
before the Patent and Trademark Office, is DEFERRED to the
Pretrial Conference;

(B) Defendants’ motion to exclude an e-mail from Rabbi Zev Schwartz
dated December 13, 2017, is DENIED;

(C) Defendants’ motion to exclude evidence of settlement negotiations
or licenses offered by plaintiff before trial is GRANTED;

(D) Defendants’ motion to exclude the testimony of plaintiff’s expert
Catherine Carr was previously GRANTED in part and DENIED in
part, as indicated in Paragraph 2 of the Minute Order entered
November 8, 2018, docket no. 66; any further objection to the scope
of Carr’s testimony is DEFERRED to the Pretrial Conference; and

(E) Defendants’ motion to sequester witnesses is GRANTED, except
that the issue of who may be present during trial as a party
representative is DEFERRED to the Pretrial Conference.

(5) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Dated this 6th day of September, 2019.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk